

SHB 1251 - H AMD 321

By Representative Santos

ADOPTED 03/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
4 tax refund anticipation loan act.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Borrower" means a taxpayer who receives the proceeds of a
8 refund anticipation loan.

9 (2) "Department" means the department of financial institutions.

10 (3) "Director" means the director of the department of financial
11 institutions.

12 (4) "Facilitator" means a person who receives or accepts for
13 delivery an application for a refund anticipation loan, delivers a
14 check in payment of refund anticipation loan proceeds, or in any other
15 manner acts to allow the making of a refund anticipation loan.
16 "Facilitator" does not include a bank, thrift, savings association,
17 industrial bank, or credit union operating under the laws of the United
18 States or this state, an affiliate that is a servicer for such an
19 entity, or any person who acts solely as an intermediary and does not
20 deal with a taxpayer in the making of the refund anticipation loan.

21 (5) "Lender" means a person who extends credit to a borrower in the
22 form of a refund anticipation loan.

23 (6) "Person" means an individual, a firm, a partnership, an
24 association, a corporation, or other entity.

25 (7) "Refund anticipation loan" means a loan borrowed by a taxpayer
26 from a lender based on the taxpayer's anticipated federal income tax
27 refund.

28 (8) "Refund anticipation loan fee" means the charges, fees, or
29 other consideration imposed by the lender for a refund anticipation

1 loan. This term does not include any charge, fee, or other
2 consideration usually imposed by the facilitator in the ordinary course
3 of business for nonloan services, such as fees for tax return
4 preparation and fees for electronic filing of tax returns.

5 (9) "Refund anticipation loan fee schedule" means a listing or
6 table of refund anticipation loan fees charged by the facilitator or
7 the lender for three or more representative refund anticipation loan
8 amounts. The schedule shall list separately each fee or charge
9 imposed, as well as a total of all fees imposed, related to the making
10 of refund anticipation loans. The schedule shall also include, for
11 each representative loan amount, the estimated annual percentage rate
12 calculated under the guidelines established by the federal truth in
13 lending act, 15 U.S.C. Sec. 1601 et seq.

14 (10) "Taxpayer" means an individual who files a federal income tax
15 return.

16 NEW SECTION. **Sec. 3.** (1) No person may individually, or in
17 conjunction or cooperation with another person, solicit the execution
18 of, process, receive, or accept an application or agreement for, a
19 refund anticipation loan without first being licensed with the director
20 as a facilitator.

21 (2) This section does not apply to a person doing business as a
22 bank, thrift, industrial bank, savings and loan association, or credit
23 union, under the laws of the United States or any state.

24 (3) This chapter shall preempt and be exclusive of all local acts,
25 statutes, ordinances, and regulations relating to refund anticipation
26 loans. This subsection shall be given retroactive and prospective
27 effect.

28 NEW SECTION. **Sec. 4.** (1) An application to become licensed as a
29 facilitator must be in writing, under oath, and in a form prescribed by
30 the director. The application must contain all information prescribed
31 by the director and must include any licenses that a state or federal
32 entity has issued to the applicant. Each application for a license
33 must be accompanied by a two hundred fifty dollar initial licensing fee
34 for each office where the facilitator intends to facilitate refund
35 anticipation loans.

1 (2) Prior to issuing a license, the director must review the
2 responsibility and general fitness of the applicant. The director may
3 adopt rules establishing criteria to implement this subsection.

4 (3) Unless the director denies the application, the director shall
5 license the applicant upon the filing of a completed application for a
6 license. The director shall issue and transmit to the applicant a
7 license. If the director denies the application, the director shall
8 notify the applicant of the reasons for the denial within forty-five
9 days of the receipt of the application.

10 (4) Upon receipt of a license, the applicant is licensed under this
11 chapter and may engage in the business of facilitating refund
12 anticipation loans at the offices identified on the application for the
13 license.

14 (5) In addition to any requirements for a license set forth by rule
15 of the director under this chapter, the director shall consider the
16 facilitator's status as a tax preparer when determining whether to
17 grant, renew, or revoke a facilitator's license.

18 NEW SECTION. **Sec. 5.** (1) Each license for a facilitator of refund
19 anticipation loans expires on June 30th following the date it was
20 issued. Before the license expires, the facilitator may renew the
21 license by filing with the director an application for renewal in the
22 form and containing all information prescribed by the director. Each
23 application for renewal of a license must be accompanied by a one
24 hundred dollar renewal fee for each office where the facilitator
25 intends to facilitate refund anticipation loans during the succeeding
26 year.

27 (2) Upon the filing of an application for renewal of a license, the
28 director may renew the license. Prior to renewal, the director must
29 review the fitness and general responsibility of the facilitator. If
30 the director does not renew the license, the director shall notify the
31 facilitator, stating the reasons for the denial. The director may
32 adopt rules establishing criteria to implement this subsection.

33 (3) The director shall establish rules defining the time frame in
34 which the application required under this section must be filed, and
35 the time frame in which the department must process and notify the
36 applicant of the department's decision regarding the application.

1 NEW SECTION. **Sec. 6.** (1) For all refund anticipation loans, a
2 facilitator must provide a clear disclosure statement to the borrower,
3 prior to the borrower's completion of the application. The disclosure
4 statement required under this subsection must be printed in a minimum
5 of ten-point type. Further, the disclosure statement must contain the
6 following:

7 (a) The refund anticipation loan fee schedule; and

8 (b) A written statement containing the following elements:

9 (i) That a refund anticipation loan is a loan, and is not the
10 borrower's actual income tax refund;

11 (ii) That the taxpayer can file an income tax return electronically
12 without applying for a refund anticipation loan;

13 (iii) The average times according to the internal revenue service
14 within which a taxpayer who does not obtain a refund anticipation loan
15 can expect to receive a refund if the taxpayer's return is (A) filed
16 electronically and the refund is directly deposited to the taxpayer's
17 bank account or mailed to the taxpayer, and (B) mailed to the internal
18 revenue service and the refund is directly deposited to the taxpayer's
19 bank account or mailed to the taxpayer;

20 (iv) That the internal revenue service does not guarantee that it
21 will pay the full amount of the anticipated refund and it does not
22 guarantee a specific date that a refund will be deposited into a
23 taxpayer's financial institution account or mailed to a taxpayer;

24 (v) That the borrower is responsible for repayment of the loan and
25 related fees in the event that the tax refund is not paid or paid in
26 full;

27 (vi) The estimated time within which the loan proceeds will be paid
28 to the borrower if the loan is approved; and

29 (vii) The fee that will be charged, if any, if the borrower's loan
30 is not approved.

31 (2) The following additional information must be provided to the
32 borrower of a refund anticipation loan before consummation of the loan
33 transaction:

34 (a) The estimated total fees for obtaining the refund anticipation
35 loan; and

36 (b) The estimated annual percentage rate for the borrower's refund
37 anticipation loan, using the guidelines established under the federal
38 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

1 NEW SECTION. **Sec. 7.** A borrower may rescind a loan, on or before
2 the close of business on the next day of business at the location where
3 the loan was originated, by returning the principal in cash or the
4 original check disbursed by the facilitator to fund the refund
5 anticipation loan. The facilitator may not charge the borrower for
6 rescinding the loan and shall return to the borrower any postdated
7 check taken as security for the loan or any electronic equivalent. The
8 facilitator shall conspicuously disclose to the borrower this right of
9 rescission in writing in the disclosure statement required under
10 section 6(1) of this act.

11 NEW SECTION. **Sec. 8.** It is unlawful for a facilitator of a refund
12 anticipation loan to engage in any of the following activities:

13 (1) Misrepresent a material factor or condition of a refund
14 anticipation loan;

15 (2) Fail to process the application for a refund anticipation loan
16 promptly after the consumer applies for the loan;

17 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or
18 unethical practice or conduct in connection with a refund anticipation
19 loan;

20 (4) Arrange for a creditor to take a security interest in any
21 property of the consumer other than the proceeds of the consumer's tax
22 refund to secure payment of the loan;

23 (5) Impose charges, fees, or other consideration for a refund
24 anticipation loan. This does not preclude any charge, fee, or other
25 consideration usually imposed by the facilitator in the ordinary course
26 of business for nonloan services, such as fees for tax return
27 preparation and fees for electronic filing of tax returns;

28 (6) Offer a refund anticipation loan that exceeds the amount of the
29 anticipated tax refund less fees;

30 (7) Act as a facilitator unless they are authorized as an
31 electronic return originator by the internal revenue service at the
32 time; and

33 (8) Arrange for a refund anticipation loan unless the facilitator
34 is a tax preparer or works for a person that engages in the business of
35 tax preparation.

1 NEW SECTION. **Sec. 9.** Any person who knowingly and willfully
2 violates this chapter is guilty of a misdemeanor and shall be fined up
3 to five hundred dollars for each offense.

4 NEW SECTION. **Sec. 10.** The legislature finds that the practices
5 covered by this chapter are matters vitally affecting the public
6 interest for the purpose of applying the consumer protection act,
7 chapter 19.86 RCW. A violation of this chapter is not reasonable in
8 relation to the development and preservation of business and is an
9 unfair or deceptive act in trade or commerce and an unfair method of
10 competition for the purpose of applying the consumer protection act,
11 chapter 19.86 RCW.

12 NEW SECTION. **Sec. 11.** The director may adopt rules to implement
13 sections 4 and 5 of this act.

14 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
15 constitute a new chapter in Title 19 RCW."

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